IN THE HIGH COURT OF BOMBAY AT GOA
****

WRIT PETITION NO. 125 OF 2004

Mrs. Ivy Muriet Fonseca,
major of age, r/o
'Radiant Park', 968,
Nana Peth, Pune -2. ... Petitioner

Versus

Mr. Porus Adi Doctor,
major of age, s/o
Adi H. Doctor, r/o
'Perin Villa', B. B.Borkar
Road, Alto Porvoim, Bardez,
Goa. ... Respondent.

Shri S. D. Lotlikar, Senior Advocate with Ms. S. Naik, advocate for the petitioner.

Shri A. D'Silva, advocate for the respondent.

CORAM : S. A. BOBDE, J.

DATE : 17th June, 2004.

ORAL JUDGMENT

Rule returnable forthwith. Heard by consent.

2. The petitioner challenges the rejection of the proposed amendment to the written statement. Firstly by way of addition to paragraph 22 the petitioner sought to introduce a plea to explain the contents of the deed of annulment dated 22nd January, 2001. By the proposed plea the petitioner also sought to introduce a plea that in fact when the earlier agreement was entered into, though the said agreement stated that a cheque was received, no cheque was received.

3. Secondly, by an amendment to paragraph 42, the petitioner sought to make a reference to a Civil Suit filed by

him under Section 6 of the Specific Relief Act, 1963.

4. The first part of the proposed amendment to paragraph 22 has been disallowed by the trial Court apparently on the ground that it would effect a withdrawal of a statement made in the deed of annulment, which was originally annexed to the written statement. It is difficult to agree with the trial Court on this point. It is not known under what circumstances the trial court has taken the view that the pleadings would result in withdrawal of a statement made in a document, i.e. in a piece of evidence. This reason given by the trial Court is wholly unsustainable and constitutes an error of law apparent on the record.

5. As far as the second part of the amendment, i.e. to paragraph 42, it is clear that that only thing the petitioner sought to do was to add averments pertaining to a suit filed by her under Section 6 of the Specific Relief Act. This amendment has been rejected on the ground that the suit filed under Section 6 has nothing to do with the issue involved in the present suit, i.e. whether the suit agreement requires to be specifically performed. It is obvious that the relevance of the plea could have been examined at a later stage. Surely the petitioner could not have been prevented from bringing on record the fact of filing a separate suit under Section 6 of the Specific Relief Act, in respect of the same property, since it would also affect the moulding of the

reliefs sought by the respondent in the suit.

6. In this view of the matter, I am of the view that the amendment ought to have been allowed and its denial has resulted in an error of law apparent from the record. It is settled law that amendments ought to be allowed unless they are extraordinarily belated or take away a valuable admission consciously made. Retracting an admission already made obviously has reference to admissions made in the pleadings and not the contents of the document.

7. In this view of the matter, the petition deserves to be allowed and is hereby allowed. The petitioner shall be allowed to amend the written statement as prayed for by him.

S. A. BOBDE, J.

mc.